SINGAPORE REPORTS.

LOH KHING WOON v. LAI KONG JIN AND ANOTHER.

[Orig. Civil Juris. (Murray-Aynsley, C.J.) Sept. 23, 1946]

Agency — Power of Attorney — Residence of principal and agent one in enemy occupied territory and the other in unoccupied territory — Whether this would permanently put an end to the relationship of principal and agent — What constitutes occupation — Permanency of occupation — International Law — Custodian of Property Proclamation, Section 8 (2).

Both the plaintiff and the defendants claimed to be tenants of the premises known as No. 149 Geylang Road, Singapore, the owner of which was one Ching Ewe Seng whose residence at all material times was in Borneo and whose duly constituted attorney was one Wong Wei Tang who lived in Singapore.

Purporting to act under the said Power of Attorney the said Wong Wei Tang let the said premises to the plaintiff on 1st October 1945. Later, in exercise of his powers under Section 8 (2) of the Custodian of Property Proclamation, the Custodian took custody of the said premises and on or about the 7th of December 1945 let them to the defendants.

The question to be decided was whether the said Wang Wei Tang or the Custodian had the power to create a valid tenancy on behalf of the absent owner. For the defendants it was contended that on the occupation of Singapore by the Japanese Armed Forces the Power of Attorney aforesaid was abrogated and not merely suspended, so that the relationship of principal and agent was determined on account of the parties to the agency agreement being separated by a line of war, one becoming an enemy to the other.

Held, (1) that in order to decide when a territory became enemy-occupied the Court must not consider merely the question of the presence of the forces of one side and the absence of those of the other; to constitute occupation the Court must not regard the fluctuations of a campaign but must look for a certain element of permanency;

(2) that the evidence in this case did not show that the enemy occupation took place at different dates in the case of the place of residence of the principal and that of the agent and that therefore there was in fact no moment when one of the parties was in occupied territory and the other outside; and

(3) that the power of attorney was not abrogated and therefore the plaintiff was entitled to the tenancy of the premises.

Cases referred to :—

(1) *Sovfracht (v/o) v. Van Udens Scheepvaart* (1943) 1 A.E.R. 76.

(2) *Tingley v. Muller* (1917) 2 Ch. 144.

(3) *Meyer v. Dreyfus* (1941) 4 A.E.R. 157.

N. N. Leicester for plaintiff.

Mark Morrison for 1st defendant.

Eric Choa for 2nd defendant.

Cur. Adv. Vult.

Murray-Aynsley, C.J. :— In this case the plaintiff claims a tenancy of premises in 149 Geylang Road. The defendants also claim to be tenants.

The facts of the case are simple and not in dispute. The property belongs to one Chng Ewe Seng who at all material times has lived at various places in the island of Borneo and has given a power of attorney to one Wong Wei Tang the terms of which are sufficiently wide to enable the attorney to confer the rights claimed by the plaintiff. On October 1st last under the power of attorney Wong Wei Tang let the premises to the plaintiff. Later the Custodian of Property under the powers conferred by section 8 (2) of the Custodian of Property Proclamation took over the property and on or about December 7th last let the premises to the defendants. The section reads as follows :—

> The Custodian may take into his custody such British, Allied or neutral property (other than State property) of which the owner is absent from, and has no accredited representative in, the Settlement of Singapore, as in the opinion of the Chief Civil Affairs Officer is necessary either for the maintenance of services essential to the community or for the good administration of the Division.

It will be seen that a condition precedent to the exercise of the power by the Custodian is that the owner should either be absent from, or have no accredited representative in, the Settlement of Singapore.

If the powers under this section were validly exercised the Custodian had power to let the property as he did. Later the Custodian relinquished control and he informed the defendants' solicitors of this in a letter of January 15th. In this letter he purported to "cancel" the custody order. Whether he could do so except under section 10 I do not know, but in any event I do not consider that any relinquishment or cancellation could prejudice rights validly acquired by third parties during the period of custody.

The whole matter turns, therefore, on whether the power of attorney was effective at the time that the attorney let the premises to the plaintiff.

The only ground on which the defendants claim to attack the power of attorney is that it was abrogated by the events which took place during the invasion and occupation of both Singapore and the Island of Borneo by the Japanese forces. These events were not pleaded as facts nor was any evidence produced on the subject.

I think that I may take judicial notice of the fact that both Malaya and Borneo were invaded by the Japanese forces in December, 1941, and occupied until September of last year. It is not contended that the

residence of both principal and attorney in occupied areas would affect the validity of the power of attorney. But it is contended that the residence of one in occupied territory and the other in unoccupied territory would permanently put an end to the relationship.

The principal authority cited is the *Sovfracht* case[1] which will no doubt be the guiding authority in these matters for the future. That case definitely decides that the residence of either principal or agent in occupied territory puts an end to the relation of principal and agent. I personally take this to be absolute at least of the time being.

The case of *Tingley v. Muller*[2] if it is still good law, would be authority for the proposition that the special kind of agency created by a power of attorney might be an exception, and if that were so, I do not consider that the fact that the power of attorney was expressed to be irrevocable could make any difference, as, surely, agreement between the parties could not override questions of public policy. So I take the case to be overruled. However, I do not take the question of whether the authority is permanently abrogated or merely suspended to be finally settled, as, although the language used in the House of Lords suggested finality, it was not material to the dispute between the parties. In fact Lord Wright suggested that a licence might confer power to take proceedings on a company domiciled in enemy territory and presumably to revive the retainer of their solicitors. In the case of *Meyer v. Dreyfus*[3] it would appear that a licence to trade was regarded as reviving the powers of an agent.

But even assuming that the power of the agent is not revived, I find difficulty in giving effect to the proposition advanced by the defendants on the facts as known. The basis of the contention is that at some moment or other one of the parties must have been in occupied territory and the other outside. To decide when territory becomes occupied is to decide a difficult and complicated question of fact. It is not merely the question of the presence of the forces of one side and the absence of those of the other; to constitute occupation one cannot regard the fluctuations of a campaign but must look for a certain element of permanency. On the evidence before me I am not prepared to decide that such a state of affairs was reached at a different date in the case of the place of residence of the principal and of the agent.

There must, therefore, be judgment for plaintiff with costs.

Order for possession.

HONG TAY vs. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) Oct. 19, 1946]

Tobacco Duties Ordinance (Cap. 222) Sections 22 (1) and 55 — Forfeiture of Vessel of less than 100 tons burden in which dutiable cargo is found — Notice to owner or agent.

The accused was convicted under Section 22 (1) of the Tobacco Duties Ordinance for possession of dutiable tobacco. After the accused was convicted and fined, the learned magistrate ordered the motor-sampan in which the tobacco was found to be confiscated under Section 55 of the same Ordinance. It was against this order of confiscation that the appeal was brought. It appeared that in making the order of confiscation the learned magistrate did not give an opportunity to the owner or the agent to show cause why the vessel should not be forfeited.

Held, that before an order for confiscation of a vessel of under 100 tons burden can be made under Section 55 (2) of the Tobacco Duties Ordinance, the Court must give the owner or agent thereof an opportunity of showing cause why such vessel should not be confiscated and as no such opportunity was given to the owner or agent in this case, the order of confiscation must be set aside.

C. F. J. Ess for the appellant.

A. W. Bellamy for the respondent.

Murray-Aynsley, C.J. :—This was a tobacco smuggling case. The accused was charged and convicted under section 22 (1) of Cap. 222. After he was convicted and fined, it was further ordered that a motor sampan in which the tobacco was found be confiscated under section 55 of the same Cap. It was against this part of the sentence that an appeal was brought.

By section 55 (2) it is provided that where tobacco . . . . is found in any vessel of less than 100 tons (which was the case here) such vessel . . . subject to the provisions of sub-section 3, shall be forfeited unless it is proved to the satisfaction of the Court that the offence was, or was being, committed without the knowledge, consent or connivance of the owner, agent or master or other person for the time being in command or charge of the vessel.

Sub-section 3 provides that no vessel shall be forfeited under sub-section 2 unless the Court shall have given the owner or agent thereof an opportunity of showing cause why such vessel should not be forfeited. It appeared that the vessel belonged to a registered owner in Siam and was chartered by way of demise to a kongsi of which the appellant was a partner. Another person charged was an engineer employed by the appellant. It appears that there was no evidence that either of these persons was the agent of the owner within the meaning of sub-section 3.

As no opportunity was given to the owner or agent to show cause, such part of the order as related to forfeiture of the sampan must be set aside.

Order of confiscation set aside.